

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 738 of 1999

with

CIVIL REVISION APPLICATION No 161 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

JEEVAN BHARTI MANDAL

Versus

ASHISH A SHAH

Appearance:

1. Civil Revision Application No. 738 of 1999
MS SHILPA V SHAH for Petitioner
None present for Respondent No. 1, 2, 3

2. Civil Revision Application No 161 of 1999
MS SHILPA V SHAH for Petitioner
None present for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/01/2000

ORAL JUDGEMENT

1. Both these revision applications arise from regular civil suit No.91 of 1998 in the court of 2nd Joint Civil Judge (S.D.) Surat. On the record of the civil revision application No. 738 of 1999, an affidavit of Shri Ashish Shah, plaintiff is there, which reads as under:

I, Ashish Shah, aged adult, practising advocate, at Surat do hereby solemnly declare that:

- (1) I have been served the notice personally and I am aware of the matter in dispute.
- (2) That I am not able to come personally due to unavoidable circumstances,
- (3) That I have no interest remaining in the above mentioned matter, and the Hon'ble court may pass any necessary orders accordingly.
- (4) That I have repeatedly filed applications even in the trial court, specially ex. 57, mentioning that I wish to withdraw my case, but shockingly each time adverse orders are passed in contrast.
- (5) That the contents of the above affidavit are true to my knowledge.

2. Vide Ex. 57 filed by the plaintiff- respondent, he prayed for withdrawal of the suit itself. It is really shocking that the learned trial court has not appreciated the application and deferred the consideration thereof on the ground that unless the petitioner purge himself of contempt, no order on this application can be made. It is a matter where the plaintiff is not desirous of continuing the suit, I fail to see the insistence of the trial court to first decide the contempt application. These are admission matter of students in school and normal approach of the court should have been to permit the withdrawal. In every case, the alleged disobedience of the order of the court is not of that much of substance as what it has been taken by the trial court in this case. Be that as it may.

3. Ex. 57 filed by the plaintiff - respondent No.1 is granted and the regular civil suit No. 91 of 1998 is

dismissed as withdrawn. Learned trial court is directed to draw a formal decree of the dismissal of the suit. As a result of the dismissal of the suit, all applications including the application, if any, filed for contempt of the court's order shall stand dismissed. Both these revision applications and Rule therein stand disposed of accordingly with no order as to costs.

zgs/-